IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1098 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMTS - Petitioner(s)
Versus
IBRAHIM KASAMBHAI MANSURI C/O GENERAL SECRETARY - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR VM DHOTRE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/06/2007

ORAL JUDGMENT

1. Heard Mr.G.P. Bhagel, learned counsel for the petitioner and Mr.V.M. Dhotre, learned counsel for the respondent.

2. Being aggrieved by the impugned Award dtd.5/9/2000 passed in Reference (I.T.) No.236 of 1996, by the Industrial Tribunal, Ahmedabad, setting aside the punishment awarded to the respondent workman, the employer establishment is before this Court with a complaint that the learned tribunal was absolutely unjustified in interfering in the matter when the sufficient evidence was brought on the records to show that the respondent was sole cause in committing the accident.

3. Short facts necessary for disposal of the present writ application are that the respondent - a driver, was plying a bus on 25/4/1989 between Kalupur and Naroda, at about 11.10 p.m. near Ashok Mill, the bus met with an accident and caused crushing injuries to a cyclist. On receipt of the report, a notice to show cause and thereafter, a chargesheet was issued to the driver on 6/5/1989, the allegations were replied by the respondent vide his written statement dtd.7/8/1989, the inquiry culminated against the interest of the driver, therefore, he was awarded punishment of stoppage of one increment with future effect. The driver, being aggrieved by the award of the penalty, asked for a Reference, the Reference was accordingly made and the parties were

issued necessary notices. The driver filed details of his claim while present petitioner establishment filed its reply and submitted that the Award of the penalty was in accordance with law.

4. The learned tribunal recorded the statement of the parties and also received documentary evidence. After hearing the parties, it answered the Reference in favour of the workman and quashed the penalty.

5. Mr. Bhagel, learned counsel for the petitioner submits that in view of the report of the investigation officer (an officer of the establishment), First Information Report lodged with the police and the report submitted by the reporter who was informed about the incident, learned tribunal could not decide and or answer the Reference in favour of the respondent.

6. Mr.Dhotre, learned counsel for the respondent, on the other hand, submitted that the Award made by the tribunal is absolutely just and calls for no interference.

7. It is trite to say that unless a person comes before the Court and says that he is an eye witness, his statement would be taken to be hear say or *res-gestae.* In the present matter, the reporter, who submitted his report, was not an eye witness so also investigating officer, who

collected the material after the incident in support of his report, which in the opinion of this Court, was the opinion evidence, nothing was brought on the records to support the said finding. People who had seen the accident and gave their reports either to the reporter or to the investigating officer, were required to be examined to prove the particular facts.

8. So far as the lodging of the First Information Report is concerned, that also would not provide any solace to the present petitioner, because, the criminal case based upon the said First Information Report ended in acquittal of the present respondent.

9. In absence of any positive evidence to lead the guilt home, the petitioner cannot be allowed to say that the impugned award made by the learned tribunal is unjust.

10. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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